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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRIS BARRIENTOS,

Defendant and Appellant.

H034588

(Santa Clara County

Super.Ct.No. CC824808)

Defendant Chris Barrientos was convicted by no contest plea of one count of possession of methamphetamine for sale in violation of Health and Safety Code section 11378,<sup>1</sup> one count of possession of drug paraphernalia in violation of section 11364, and one count of possession of a hypodermic needle in violation of Business and Professions Code section 4140. He also admitted two prior prison terms. After the court denied his *Romero*<sup>2</sup> motion to dismiss a prior strike, the court sentenced defendant to 44 months in prison under the negotiated disposition.

In orally pronouncing judgment, the court imposed \$300 in drug program fees under section 11372.7 plus penalty assessments. But the court minutes and the abstract of judgment both reflect \$450 in drug program fees plus penalty assessments of

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<sup>1</sup> Further statutory references are to the Health and Safety Code unless otherwise stated.

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

\$1,192.50 calculated on that erroneous amount. On appeal, defendant challenges the additional \$150 in drug program fees, along with related penalty assessments. The People concede the point. We accordingly strike \$150 in drug program fees, reducing such fees to \$300 as the court correctly imposed, and further reduce related penalty assessments to \$795.

## STATEMENT OF THE CASE

### I. *Factual Background*

The underlying facts of the offenses are not relevant to the appeal. Suffice it to say that while conducting a parole search of defendant's bedroom and garage, police found two glass pipes, small empty baggies (both used and unused), two syringes, and almost an ounce of methamphetamine.

### II. *Procedural Background*

After being arrested and bound over for trial, defendant was charged by information with possession of methamphetamine for sale in violation of section 11378 (count1); possession of drug paraphernalia in violation of section 11364 (count 2); and possession of a hypodermic needle in violation of Business and Professions Code section 4140 (count 3). The complaint also alleged a prior strike within the meaning of Penal Code sections 667, subdivisions (b) through (i) and 1170.12 and three prior prison commitments within the meaning of Penal Code section 667.5, subdivision (b).

In a negotiated disposition, defendant pleaded no contest to the charges and admitted the strike and two prison priors. The other prison prior was dismissed. After the court denied defendant's *Romero* motion to dismiss the prior strike, the court sentenced him to state prison for a term of 44 months consisting of the low term of two years, eight months for count 1, plus one year for one prison prior, and six month concurrent jail terms for each of the other two charges. Sentence on the other remaining prison prior was stayed. The court imposed various fines and fees, including a "\$300

drug program fee . . . imposed pursuant to [section] 11372.7 of the Health and Safety Code” plus penalty assessments. The clerk’s minutes reflect that the \$300 fee actually imposed by the court was crossed out and replaced with a drug program fee of \$450 plus penalty assessments on that amount of \$1,192.50 and both of these erroneous amounts are indicated on the abstract of judgment.

### DISCUSSION

Defendant contends that the \$450 in drug program fees is excessive by \$150. This is because section 11372.7, subdivision (a) authorizes a maximum of \$150 per every count brought within that chapter of the Health and Safety Code, which would authorize a maximum fine here of \$300 for counts one and two, and it does not apply to counts brought under the Business and Professions Code, as count three was here. He further contends by extension that penalty assessments on the drug program fee are also excessive by one third, or \$397.50. The People concede both points.

Defendant is mistaken in his assertion that the court erroneously imposed \$450 in drug program fees. In its oral pronouncement of judgment, the court imposed \$300 in such fees under section 11372.7, which was correct. But the clerk’s minutes and the abstract of judgment both erroneously reflect drug program fees of \$450, with penalty assessments calculated on that amount. The court did not err because it is the oral pronouncement of judgment that controls. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) Nevertheless, because the minutes and the abstract each reflect a different amount for such fees than what was actually imposed, we strike the excess \$150 in drug program fees and the excess \$397.50 in related penalty assessments. We further direct the superior court clerk on remand to correct the minutes and the abstract to reflect drug program fees of \$300 instead of \$450 and related penalty assessments of \$795 instead of \$1,192.50.

## DISPOSITION

The clerk of the Santa Clara County Superior Court is directed on remand to correct the minutes and the abstract of judgment to reflect drug program fees of \$300 actually imposed instead of \$450 and related penalty assessments of \$795 instead of \$1,192.50. The clerk is further directed to send a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

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Duffy, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Mihara, J.